

## CHAPTER 17 EXEMPT SALES

[Prior to 12/17/86, Revenue Department[730]]

### **701—17.1(422,423) Gross receipts expended for educational, religious, and charitable purposes.**

Prior to July 1, 2001, net proceeds of an organization are exempt to the extent such proceeds are expended for educational, religious, or charitable purposes, except receipts from games of skill, games of chance, raffles, and bingo. Iowa Code section 422.45(3) requires that the activity from which the proceeds are derived must be from sales of educational, religious, or charitable activities and that the net proceeds be expended on these types of qualifying activities to be exempt from sales tax. For the purposes of determining if net proceeds are exempt from tax under this rule, subsequent to the sales event, the department analyzes the activities and the extent to which the net proceeds are expended on such activities. Net proceeds are exempt from sales tax to the extent that they are expended on educational, religious, or charitable activities.

**17.1(1) Evaluation.** For purposes of this rule, educational, religious, and charitable activities will be evaluated as follows:

*a. Educational.* The acquisition of knowledge tending to develop and train the individual. An activity that has as its primary purpose to educate by teaching. An activity that has as its primary objective to give educational instruction. An activity where the educational process is not merely incidental. An activity where the purpose is systematic instruction. The term educational purpose is synonymous with educational undertaking, and therefore, it can also include recreational activities as well as an activity designed to offer culture to the public. Activities which are directly related to the educational process of such as intramural sports and tests given to students or prospective students to measure intelligence, ability, or aptitude are considered educational for purposes of the exemption found in Iowa Code section 422.45(3). Municipal or civic art and science centers and libraries are also considered educational for purposes of the exemption.

**EXAMPLE 1:** Little Folks, a local preschool, has a chili supper to raise money for playground equipment, educational materials, and classroom furniture. The net proceeds from the supper are exempt from sales tax because the total amount of the net proceeds from the chili supper will be used for educational purposes. In addition, purchases made by the preschool may be exempt from tax if the preschool can meet the qualifications to be classified as an educational institution. See 701—17.11(422,423) for additional information regarding this exemption.

**EXAMPLE 2:** A local ballet company promotes the arts, provides classes and instruction on various types of dance, and sponsors and performs at numerous recitals that are free to the public. At its location, the ballet company has a gift shop in which patrons can purchase T-shirts, dance wear, and costumes. All proceeds are utilized by the ballet company to pay for its operational expenses and to perform the activities previously mentioned. The proceeds from this gift shop are exempt from Iowa sales tax to the extent they are utilized to pay for the stated educational activities.

*b. Religious.* The words “religious purpose” are analogous to religious worship. In the broadest of terms, it includes all forms of belief in the existence of superior beings capable of exercising power over the human race. As commonly accepted, it means the final recognition of God. It encompasses forms of worship, reference to one’s views about God, or the relationship to one’s creator. It also includes the use of property by a religious society or by a body of persons as a place for public worship.

**EXAMPLE 1:** A local church has a bake sale. All the net proceeds are returned to the church for religious purposes. Bake sales are generally exempt from sales tax unless the product is sold for “on-premises consumption” (see 701—20.5(422,423)), but the net proceeds are exempt from tax in any event because they are going to be used for religious purposes. However, any purchases made by the church that are not for resale are subject to sales tax. See 701—subrule 17.1(3).

EXAMPLE 2: Another local church conducts bingo games every Thursday. The net proceeds from the bingo activities will be used for religious purposes. However, bingo and other gambling activities are subject to sales tax regardless of the manner in which the proceeds are going to be used. See 17.1(5)“t.”

c. *Charitable.* The term “charitable” may be applied to almost anything that tends to promote well-doing and well-being for public good or public welfare with no pecuniary profit to the one performing the service or the giving of gifts by persons kindly disposed toward others, without obligation. An activity for the benefit of the public at large which includes relief of poverty, advancement of education or religion, promotion of health, providing a government or municipal service, and other activities, the purpose of which is to benefit the community, is considered charitable. Maintenance of public parks is a valid charitable purpose. Schools, Red Cross, Boy Scouts, and relief agencies are charitable. Profit-making organizations are not charitable, but may engage in charitable activities. An activity where net earnings go to the benefit of any private shareholder or individual sponsoring the activity is not charitable.

EXAMPLE 1: A local, nonprofit animal shelter that provides shelter, medical care, socialization, and adoption services for homeless animals sells T-shirts and sweatshirts depicting rescued animals as a fund-raiser. All the net proceeds from the sales will go to and be used by the animal shelter to defray the costs it incurs. Sales of the T-shirts and sweatshirts would be exempt from sales tax since the net proceeds would be expended on a charitable purpose. Items purchased by the shelter for resale would also be exempt from sales tax. Items purchased by the shelter that are not for resale, such as dog or cat food that will be used by the shelter, would be subject to sales tax.

EXAMPLE 2: An American Legion post conducts a pancake supper as a fund-raiser for disabled veterans. Some of the net proceeds are used to benefit disabled veterans and the remainder will be used by the American Legion post to pay rent and utilities at its location. Pursuant to subrule 17.1(2), when a portion of the net proceeds are intended to be expended for a qualifying exempt activity, then sales tax should not be collected from the consumer. In turn, the sponsoring organization of the activity, in this case the American Legion post, would not need to remit sales tax on the portion of the net proceeds that is expended for the charitable activity. However, the portion of net proceeds used by the American Legion post to pay rent and utilities is subject to sales tax due to the fact that the net proceeds were not used for a qualifying activity.

EXAMPLE 3: A nonprofit hospital operates a gift shop. All of the proceeds are used to defray costs of hospital care for indigent patients who are unable to pay for such care. Due to the fact that all of the net proceeds are used for a charitable purpose, the proceeds are exempt from sales tax. In addition, effective July 1, 1998, purchases made by the nonprofit hospital are also exempt from sales tax.

**17.1(2) Entire proceeds.** An Attorney General’s Opinion issued on November 2, 1967, indirectly offers a test of whether the gross receipts from an educational, charitable, or religious activity are entirely spent for such purpose. The test is whether all expenditures are so related to the activity so that the expenditure itself is for an educational, charitable, or religious purpose. The term “entire proceeds” is defined as those proceeds remaining after direct expenses have been deducted from the gross receipts derived from the activity or event. In addition to this definition, the expenses should be necessary and have an immediate bearing or relationship to the fulfillment of the activity. For example, the cost of food for a fund-raising meal would be a direct expense. However, the cost of a victory celebration because the fund-raising dinner was a success would not be a direct expense. Another example of where the direct expense rule would be violated would be where an educational institution invested proceeds from an art show into income-producing property and the remainder to purchase books for the library.

Examples of where cost of items would be a valid direct expense include, but are not limited to: 1. Cost of food, if for a fund-raising meal or the selling of food items. 2. Cost of tickets, if the receipts from the tickets are the principal receipts for the activity or event, or 3. Cost of entertainment, if the entertainment is the principal proceeds for the activity or event, such as a fund-raising dance.

For sales made on or after July 1, 1993, an exemption from sales tax shall be allowed even though the entire proceeds are not used for educational, religious, or charitable purposes. The exemption shall apply only to that portion of the proceeds used for educational, religious, or charitable purposes.

At the time of the selling event a presumption is made that sales tax will not be charged and collected from the consumer on the property or service sold. This particular exemption is dependent upon how the entire proceeds from the sale are expended, which follows the selling event. If after the event a portion of the proceeds is expended for a noneducational, nonreligious, or noncharitable purpose, tax is due on that portion of the proceeds in the quarterly period in which that portion was expended.

**17.1(3) *Purchases by organizations.*** Organizations engaged in educational, religious, or charitable activities which sell tangible personal property or render, furnish or perform taxable services at retail in Iowa in connection with such activities shall be exempt from the payment of sales tax on their gross receipts derived from such sales, provided two requirements are met: (1) The activity must be educational, religious, or charitable and (2) the entire proceeds must be used for educational, religious, or charitable purposes.

Organizations that qualify for an exemption shall be entitled to purchase tangible personal property which they resell in connection with such activities without being charged tax on the property. They may give their suppliers a proper certificate of resale, indicating they are using the property for the exempt purpose as outlined and explaining that they do not hold a permit for the reason that their receipts from the sale of tangible personal property in connection with the activities are exempt from tax. Purchases by educational, religious, or charitable organizations which are not for resale, cannot be purchased free of sales tax. Nonprofit educational institutions should see rule 17.11(422,423) for taxable status of their purchases.

**17.1(4) *General information.*** The following is general information, important to organizations involved in educational, religious, or charitable activities:

*a.* There is no authority in the Iowa Code to grant a nonprofit corporation any type of blanket sales or use tax exemption on its purchases because the organization is exempted from federal or state income taxes.

*b.* Nonprofit corporations and educational, religious, or charitable organizations are subject to audit and should keep financial records for five years which meet acceptable accounting procedures.

*c.* Nonprofit corporations and educational, religious, or charitable organizations can be held responsible for the payment of sales and use taxes as would any other individual, retailer, or corporation.

*d.* Nonprofit corporations and educational, religious, or charitable organizations are not required to obtain a sales tax permit or any type of registration number if they are not making taxable sales. There is no provision in the Iowa Code which requires that such organizations have a special sales tax number or registration number and none are issued by the department of revenue and finance. However, if such organizations are making sales which are subject to tax, then a sales tax permit must be obtained.

e. There is no statutory authority to require an organization or an individual to acquire an exemption letter or special certificate in order to claim an exemption under Iowa Code section 422.45(3). However, the burden of proof that an organization is entitled to an exemption lies with the organization. If an organization or individual wishes to notify the department of revenue and finance of an upcoming event, or if an organization or individual wishes to inquire about the tax status of an activity, the department encourages contact with its main office in Des Moines, Iowa. Inquiries should be made in writing explaining in detail the event and how the proceeds therefrom are going to be used, and the time and place of the event. All inquiries should be made in advance of the event.

Under Iowa Code section 422.54, the department does have statutory authority to verify whether an individual or an organization which is making retail sales is required to file a return. Therefore, organizations or individuals may be asked to provide written information regarding the retail sales in a manner or form required by the department and return it to the nearest department of revenue and finance field office within 30 days from the date the information was requested by the department.

Failure to complete and remit the requested information as required may result in a formal audit of the organization's or individual's records.

Inquiries regarding an individual's or an organization's sales tax exemption status relating to its fund-raising activities should be made to the department's taxpayer services section in Des Moines. Any decisions reached by the department of revenue and finance are conditional pending an audit and verification of how the proceeds from the event were used.

f. Even though an activity or an organization has been recognized as one which could avail itself to the exemption provided by Iowa Code section 422.45(3), it can still be held responsible for sales tax on gross receipts if the department finds, upon additional investigation, that the proceeds expended by the organization were not for educational, religious, or charitable purposes.

**17.1(5) *Specific information.*** Listed below are some common situations in which the sales tax exemption provided by section 422.45(3) may or may not be applicable:

a. Gross receipts from the sale of food and tangible personal property by individuals and organizations at bazaars, sporting events, fairs, carnivals, and centennial organizations, where the entire proceeds are expended for educational, religious, or charitable purposes, are exempt.

b. Gross receipts from sales by students where the gross receipts therefrom are expended for educational, religious, or charitable purposes or school-related functions, are exempt.

c. Gross receipts from the sales of food and tangible personal property by the Boy Scouts, Girl Scouts, YMCA, 4-H and their satellite organizations, where the entire proceeds therefrom are expended for educational, religious, or charitable purposes, are exempt.

d. Gross receipts from tickets or admissions, except to athletic events of educational institutions, to the extent net proceeds therefrom are expended for educational, religious, or charitable purposes, are exempt.

e. Gross receipts from church-related functions, such as the ladies' auxiliary, except gambling activities, where the entire proceeds are expended for educational, religious, or charitable purposes, are exempt.

f. Gross receipts from activities or events where the entire proceeds therefrom are donated to support governmental or municipal services are considered charitable, and therefore, are exempt. Also, entire proceeds expended for civic projects are exempt. An example would be proceeds from activities of the Junior Chamber of Commerce, Lions Clubs, or Kiwanis which are expended on a civic project.

*g.* Sales to organization members, primarily for the purpose of the selling organization, are exempt if the selling organization is educational, religious, or charitable. Examples are sales of uniforms, insignias, and equipment by Scout organizations to their members, sales of Bibles by a church to its members, and sales of choir robes by a church to its members.

*h.* A summer camp or ranch is generally considered a form of amusement which provides recreation to those who attend. If it is operated for profit, it is a form of commercial recreation and the gross receipts therefrom would be subject to sales tax. If it is not operated for profit, but is operated to help underprivileged children, or any child, and educates the child in some manner, the sales tax exemption would apply.

*i.* Rescinded IAB 11/20/96, effective 12/25/96.

*j.* Admissions to athletic events of educational institutions (except athletic events of elementary and secondary educational institutions) are taxable under Iowa Code section 422.43 regardless of how the proceeds are expended. Educational institutions having proceeds from athletic events should obtain an Iowa sales tax permit. See 701—subrule 16.26(2).

*k.* The gross receipts from admissions to and the sale of tangible personal property at centennial events are exempt from sales tax only if the entire proceeds from such sales are used for educational, religious, or charitable purposes. Whether a centennial is educational rather than a commercial amusement depends on the activities and events held at the centennial.

*l.* A professional golf tournament or any similar event where spectators view professional athletics is not an educational activity.

*m.* Generally, organizations which produce plays and concerts are not conducting educational activities unless there is evidence that the organization has as its primary objective to give educational instruction to the members of its organization, and the plays and concerts are a means to practice what is learned through the organization. However, each situation is factual and must be evaluated on its own merits.

*n.* The mere renting of facilities to be used by another person or organization for educational, religious, or charitable purposes is not an educational, religious or charitable activity.

*o.* Where proceeds are used to reimburse individuals for the cost of transporting their automobiles to an antique car show, the proceeds are not considered to be expended for educational purposes, and the gross receipts from the car show are subject to tax.

*p.* Activities to raise funds to send members of educational, religious, or charitable organizations to conventions and other similar events which are directly related to the purposes of the educational, religious, or charitable organization are within the exemption requirements provided in Iowa Code section 422.45(3).

*q.* Organizations whose function is to promote by advertising the use of a particular product which can be purchased at retail, even though educating the public, do not qualify for the exemption provided by Iowa Code section 422.45(3).

*r.* Sales of tangible personal property by civic and municipal art and science centers are of an educational value and the gross receipts therefrom are exempt from tax if the entire proceeds are expended for educational, religious, or charitable purposes.

*s.* Organizations such as the Big Ten Conference, Big Eight Conference, and the Missouri Valley Conference are, themselves, educational institutions since they are made up of member schools which are educational institutions. Any other public body made up of educational institutions could be entitled to the exemptions found in Iowa Code sections 422.45(5) and 422.45(8).

*t.* All proceeds from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B are subject to sales tax regardless of who is operating the game and regardless of how the proceeds therefrom are expended except that those games operated by a county or a city are exempt from collecting the sales tax. See rule 701—18.39(422). When organizations operate such games, they are required to have a sales tax permit and a gambling license. See 195—Chapters 20 to 25 of the rules.

**17.1(6) *Taxability of profits on or after July 1, 2001.*** Effective July 1, 2001, gross receipts from the sale or rental of tangible personal property or services in which the profits are used by or donated to a qualifying nonprofit entity are exempt from Iowa sales or use tax. The profits must be expended on educational, religious, or charitable activities in order for the sales transactions to be exempt from sales tax. For the purposes of determining if sales transactions are exempt from tax under this rule, the department determines the extent to which the profits are expended. Sales transactions are exempt from sales tax to the extent that profits are expended on educational, religious, or charitable purposes.

This exemption does not apply to the gross receipts from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B.

*a.* To qualify for exemption from tax, all of the following criteria must be met:

(1) The gross receipts and profits must be from a retail sale of tangible personal property or taxable services;

(2) The profits from the sale must be used by or donated to one of the following:

1. An entity that is exempt from federal income tax under Internal Revenue Code Section 501(c)(3);

2. A government entity; or

3. A private nonprofit educational institution;

(3) The exemption is allowed to the extent that the profits are expended for any of the following purposes:

1. Educational. For purposes of this rule, “educational” means any of the following:

- The acquisition of knowledge tending to develop and train the individual.
- An activity that has as its primary purpose to educate by teaching.
- An activity that has as its primary objective to give educational instruction.
- An activity for which the educational process is not merely incidental. An activity where the purpose is systematic instruction.

The term “educational purpose” is synonymous with “educational undertaking” and, therefore, it can include recreational activities as well as an activity designed to offer culture to the public. Activities which are directly related to the educational process such as intramural sports and tests given to students or prospective students to measure intelligence, ability, or aptitude are considered educational for purposes of the exemption found in Iowa Code section 422.45(3). Municipal or civic science centers and libraries are also considered educational for purposes of the exemption.

**EXAMPLE 1:** Little Folks, a local nonprofit preschool that is exempt from federal tax under IRC Section 501(c)(3), has a chili supper to raise money for playground equipment, educational materials, and classroom furniture. The sales transactions from the supper are exempt from sales tax because the total amount of the profits from the chili supper will be used for educational purposes. In addition, purchases made by the preschool may be exempt from tax if the preschool can meet the qualifications to be classified as a private nonprofit educational institution. See 701—17.11(422,423) for additional information regarding this exemption.

EXAMPLE 2: A local nonprofit ballet company, which is exempt from federal income tax under IRC Section 501(c)(3), promotes the arts, provides classes and instruction on various types of dance, and sponsors and performs at numerous recitals that are free to the public. At its location, the ballet company has a gift shop in which patrons can purchase T-shirts, dance wear, and costumes. All profits are utilized by the ballet company to pay for its operational expenses and to perform the activities previously mentioned. The gross receipts from this gift shop are exempt from Iowa sales tax to the extent that the profits therefrom are utilized to pay for the stated educational activities.

2. Religious. The phrase “religious purpose” is analogous to “religious worship.” In the broadest of terms, it includes all forms of belief in the existence of superior beings or things capable of exercising power over the human race. It also includes the use of property by a religious society or by a body of persons as a place for public worship.

EXAMPLE 1: A local church, which is exempt from federal income tax under IRC Section 501(c)(3), has a bake sale. All of the bake sale profits are returned to the church for religious purposes. Bake sales are generally exempt from sales tax unless the product is sold for “on-premises consumption” (see 701—20.5(422,423)), but the bake sale profits are exempt from tax in any event because they are to be used for religious purposes. However, generally, any purchases made by the church that are not for resale are subject to sales tax. See 701—subrule 17.1(3).

EXAMPLE 2: Another local church, exempt from federal income tax under IRC Section 501(c)(3), conducts bingo games every Thursday. The profits from the bingo activities will be used for religious purposes. However, bingo and other gambling activities are subject to sales tax regardless of the manner in which the profits are going to be used. See 17.1(5)“t.”

3. Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add or improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift. The term “charitable” may be applied to almost anything that tends to promote well-doing and well-being for public good or public welfare with no pecuniary profit inuring to the one performing the service or the giving of gifts by persons kindly disposed toward others, without obligation. An activity for the benefit of the public at large which includes relief of poverty, advancement of education or religion, promotion of health, providing a government or municipal service, and other activities, the purpose of which is to benefit the community, is considered charitable. Maintenance of public parks is a valid charitable purpose. Schools, the Red Cross, the Boy Scouts, and relief agencies are charitable. Profit-making organizations are not charitable, but may donate to a qualifying organization that is a charitable organization or that engages in charitable activities. An activity from which the profits go to the benefit of any private shareholder or individual sponsoring the activity is not charitable. However, the casual sale exemption may apply to this type of situation. See 701—18.28(422,423) for information regarding the casual sale exemption.

EXAMPLE 1: A local, nonprofit animal shelter that is exempt from federal income tax under IRC Section 501(c)(3) provides shelter, medical care, socialization, and adoption services for homeless animals and, as a fund-raiser, sells T-shirts and sweatshirts depicting rescued animals. All of the profits from the sales will go to and be used by the animal shelter to defray the costs it incurs. Sales of the T-shirts and sweatshirts would be exempt from sales tax since the profits from the sales would be expended on a charitable purpose. Items purchased by the shelter for resale would also be exempt from sales tax. Items purchased by the shelter that are not for resale, such as dog or cat food that will be used by the shelter, would be subject to sales tax.

EXAMPLE 2: A nonprofit hospital, which has received exemption from federal income tax under IRC Section 501(c)(3), operates a gift shop. All of the profits are used to defray costs of hospital care for indigent patients who are unable to pay for such care. Due to the fact that all of the profits from the gift shop are used for a charitable purpose, the gross receipts would be exempt from sales tax. In addition, effective July 1, 1998, purchases made by the nonprofit hospital would also be exempt from sales tax. See Iowa Code section 422.45(54).

*b.* Profits. Gross receipts are exempt from sales tax to the extent that the profits are used by or donated to a qualifying organization and used for a qualifying activity. Profits are the gross receipts minus qualifying expenditures. The test of what is a qualifying expenditure is whether all expenditures are so related to the activity so that the expenditure itself is for an educational, charitable, or religious purpose. The term “profits” is defined as those proceeds remaining after direct expenses have been deducted from the gross receipts derived from the activity or event. In addition to this definition, the expenses should be necessary and have an immediate bearing or relationship to the fulfillment of the activity. For example, the cost of food for a fundraising meal would be a direct expense. However, the cost of a victory celebration because the fundraising dinner was a success would not be a direct expense. Another example of when the direct expense rule would be violated is a situation in which an educational institution invests profits from an art show into income-producing property and uses the remainder of the profits to purchase books for the library.

Examples of when the cost of items would be a valid direct expense include, but are not limited to: (1) cost of food, if for a fundraising meal or the selling of food items; (2) cost of tickets, if the receipts from the tickets are the principal receipts for the activity or event; or (3) cost of entertainment, if the entertainment is the principal source of proceeds for the activity or event, such as a fundraising dance.

At the time of the selling event, a presumption is made that sales tax will not be charged to and collected from the consumer on the property or service sold. This particular exemption is dependent upon how the profits from the sale are expended, which follows the selling event. If after the event a portion of the profits is expended for a noneducational, nonreligious, or noncharitable purpose, tax is due on that portion of the gross receipts in the quarterly period in which that portion was expended.

*c.* Purchases. Any organization that purchases tangible personal property or services for resale, the profits from the sales of which will be used by or donated to a qualifying organization, shall not pay tax on the property or services purchased for resale. Organizations that purchase tangible personal property or services for resale may give their suppliers a proper certificate of resale, indicating that the organizations are using the property for the exempt purpose as outlined and explaining that they do not hold a permit for the reason that their receipts from the sale of tangible personal property in connection with the activities are exempt from tax. Purchases by qualifying organizations which are not for resale cannot be purchased free of sales tax. Nonprofit private educational institutions should see rule 17.11(422,423) for taxable status of their purchases.

*d.* General information. The following is general information that is important to organizations involved in educational, religious, or charitable activities:

(1) There is no authority in the Iowa Code to grant a nonprofit corporation any type of blanket sales or use tax exemption on its purchases because the organization is exempted from federal or state income taxes.

(2) Nonprofit corporations and educational, religious, or charitable organizations are subject to audit and should keep for three years financial records which meet acceptable accounting procedures.

(3) Nonprofit corporations and educational, religious, or charitable organizations can be held responsible for the payment of sales and use taxes as would any other individual, retailer, or corporation.

(4) Nonprofit corporations and educational, religious, or charitable organizations are not required to obtain a sales tax permit or any type of registration number if they are not making taxable sales. There is no provision in the Iowa Code which requires that such organizations have a special sales tax number or registration number and none are issued by the department of revenue and finance. However, if such organizations are making sales that are subject to tax, then a sales tax permit must be obtained.



(5) There is no statutory authority to require an organization or an individual to acquire an exemption letter or special certificate in order to claim an exemption under Iowa Code section 422.45(3). However, the burden of proof that an organization is entitled to an exemption lies with the organization. If an organization or individual wishes to notify the department of revenue and finance of an upcoming event, or if an organization or individual wishes to inquire about the tax status of an activity, the department encourages contact with its main office in Des Moines, Iowa. Inquiries should be made in writing explaining in detail the event, how the profits therefrom are going to be used, and the time and place of the event. All inquiries should be made in advance of the event.

Under Iowa Code section 422.54, the department does have statutory authority to verify whether an individual or an organization which is making retail sales is required to file a return. Therefore, organizations or individuals may be asked to provide written information regarding the retail sales in a manner or form required by the department and return it to the nearest department of revenue and finance field office within 30 days from the date the information was requested by the department.

Failure to complete and remit the requested information as required may result in a formal audit of the records of the organization or individual.

Inquiries regarding an individual's or an organization's sales tax exemption status relating to its fundraising activities should be made to the department's taxpayer services section in Des Moines. Any decisions reached by the department of revenue and finance are conditional pending an audit and verification of how the profits from the event were used.

(6) Even though an activity or an organization has been recognized as one which could avail itself to the exemption provided by Iowa Code section 422.45(3), it can still be held responsible for sales tax on gross receipts if the department finds, upon additional investigation, that the proceeds expended by the organization were not for educational, religious, or charitable purposes.

(7) The gross receipts from sales made by a nonprofit organization that engages in the sale of any tangible personal property or enumerated services will be presumed to be taxable, unless the taxpayer can present proof that the profits are expended for an educational, religious, or charitable purpose. For example, XYZ is a certified nonprofit organization by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code. XYZ has an ice-skating facility and charges all patrons to use the facility. Iowa does not presume that the gross receipts from sales by XYZ are exempt just because XYZ is a nonprofit organization. Instead, there is a presumption that the gross receipts received by XYZ from its patrons would be subject to tax, unless XYZ can show that the profits are expended for a qualifying educational, religious, or charitable purpose or that XYZ qualifies for another exemption as set forth in Iowa Code section 422.45.

*e.* Specific information. Listed below are some common situations in which the sales tax exemption provided by Iowa Code section 422.45(3) may or may not be applicable:

(1) Gross receipts from the sales of food and tangible personal property by individuals and organizations at bazaars, sporting events, fairs, carnivals, and centennial celebrations are exempt to the extent the profits are used by or donated to a qualifying organization and are expended for educational, religious, or charitable purposes.

(2) Gross receipts from sales by students are exempt to the extent the profits therefrom are donated to a qualifying organization and are expended for educational, religious, or charitable purposes.

(3) Gross receipts from the sales of food and tangible personal property by the Boy Scouts, Girl Scouts, YMCA, 4-H and their satellite organizations are exempt to the extent that the profits are expended for educational, religious, or charitable purposes.

(4) Gross receipts from tickets or admissions, except for gross receipts from tickets or admissions to athletic events of educational institutions, which are used or donated to a qualifying organization are exempt to the extent the profits therefrom are expended for educational, religious, or charitable purposes.

(5) Gross receipts from church-related functions, such as the ladies' auxiliary, except gambling activities, are exempt to the extent the profits therefrom are donated to or used by a qualifying organization and are expended for educational, religious, or charitable purposes.

(6) Gross receipts from activities or events to the extent the profits therefrom are donated and expended to support governmental or municipal services are considered charitable and, therefore, are exempt. Also, profits from these activities, to the extent they are expended for civic projects, are exempt. An example would be profits from activities of the Junior Chamber of Commerce, Lions Club, or Kiwanis which are expended on a civic project.

(7) Sales to organization members, primarily for the purpose of the selling organization, are exempt if the selling organization is a qualifying organization to the extent the profits are expended for educational, religious, or charitable purposes. Examples are sales of uniforms, insignias, and equipment by Scout organizations to their members, sales of Bibles by a church to its members, and sales of choir robes by a church to its members.

(8) A summer camp or ranch is generally considered a form of amusement which provides recreation to those who attend. If it is operated for profit, it is a form of commercial recreation and the gross receipts therefrom would be subject to sales tax. If it is not operated for profit, has received exemption from federal income tax under IRC Section 501(c)(3), and the profits are expended for a qualifying purpose, such as to help underprivileged children or to educate a child in some manner, the sales tax exemption would apply.

(9) Admissions to athletic events of educational institutions (except athletic events of elementary and secondary educational institutions) are taxable under Iowa Code section 422.43 regardless of how the proceeds are expended. Educational institutions receiving proceeds from athletic events should obtain an Iowa sales tax permit. See 701—subrule 16.26(2).

(10) The gross receipts from admissions to and the sale of tangible personal property at centennial events are exempt from sales tax if the organization sponsoring the event is a qualifying organization or the profits are donated to a qualifying organization and to the extent the profits from such sales are expended for educational, religious, or charitable purposes. Whether a centennial is educational rather than a commercial amusement depends on the activities and events held at the centennial.

(11) A professional golf tournament or any similar event at which spectators view professional athletics is not an educational activity. However, if the profits from the golf tournament are donated to a qualifying organization and expended for educational, religious, or charitable purposes, the sales are exempt from tax.

(12) Generally, qualifying nonprofit organizations which produce plays and concerts are not conducting educational activities unless there is evidence that the organization has as its primary objective to give educational instruction to the members of its organization, and the plays and concerts are a means to practice what is learned through the organization. However, each situation is factual and must be evaluated on its own merits.

(13) The mere renting of facilities to be used by another person or organization for educational, religious, or charitable purposes is not an educational, religious, or charitable activity.

(14) When profits from an activity are used to reimburse individuals for the cost of transporting their automobiles to an antique car show, the profits are not considered to be expended for educational purposes, and the gross receipts from the car show are subject to tax.

(15) Activities to raise funds to send members of qualifying educational, religious, or charitable organizations to conventions and other similar events which are directly related to the purposes of the qualifying educational, religious, or charitable organization are within the exemption requirements provided in Iowa Code section 422.45(3).

(16) An organization whose function is to promote by advertising the use of a particular product which can be purchased at retail does not qualify for the exemption provided by Iowa Code section 422.45(3), even though promotion by advertising may educate the public.

(17) Sales of tangible personal property by civic and municipal art and science centers are of an educational value and the gross receipts therefrom are exempt to the extent the profits are expended for educational, religious, or charitable purposes.

(18) Organizations such as the Big Ten Conference, Big 12 Conference, and the Missouri Valley Conference are, themselves, educational institutions since they are made up of member schools which are educational institutions. Any other public body made up of educational institutions could be entitled to the exemptions found in Iowa Code sections 422.45(5) and 422.45(8).

(19) All proceeds from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B are subject to sales tax regardless of who is operating the game and regardless of how the proceeds therefrom are expended, except that those games operated by a county or a city are exempt from collecting the sales tax. See rule 701—18.39(422). When organizations operate such games, they are required to have a sales tax permit and a gambling license. See 481—Chapter 100.

This rule is intended to implement 2001 Iowa Acts, House File 736, section 2, and Iowa Code sections 422.45(5), 422.45(8), and 423.1.

**701—17.2(422) Fuel used in processing—when exempt.** Receipts from the sale of tangible personal property which is to be consumed as fuel in creating power, heat or steam for processing, including grain drying or for generating electric current, shall be exempt from sales tax.

The exemption provided in the case of tangible personal property consumed as fuel in creating heat applies only when such heat is directly applied in the actual processing of tangible personal property intended to be sold ultimately at retail, as distinguished from heat which is used for the purpose of heating buildings, whether such buildings be manufacturing or processing plants, warehouses or offices. *Chicago, B. & Q. R. Co. v. Iowa State Tax Commission*, 259 Iowa 178, 142 N.W.2d 407 (1966).

Fuel used in processing is exempt to creameries, dairies or ice cream factories only to the extent that the fuel is used in the actual processing of the finished product. This does not include combustible fuel used for storage after the manufacturing process is completed. For the treatment of electricity or steam used as a fuel or for any other purposes in processing by creameries, dairies, ice cream factories or other processors before, on or after July 1, 1985, see rule 17.3(422,423).

This rule is intended to implement Iowa Code section 422.42(3).

**701—17.3(422,423) Processing exemptions.** Carbon dioxide in a liquid, solid or gaseous form, electricity, steam, or other taxable services to be used in the processing of tangible personal property intended to be sold ultimately at retail are exempt from sales tax.

**17.3(1) Services used in processing.** Electricity, steam, or any other taxable service is used in processing only if the taxable service is used in any operation which subjects raw material to some special treatment which changes, by artificial or natural means, the form, context, or condition of the raw material and results in a change of the raw material into marketable tangible personal property intended to be sold ultimately at retail. The following are nonexclusive examples of what would and would not be considered electricity, steam or other taxable services used in processing:

*a.* The gross receipts from the sale of electricity or steam consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail would be exempt from tax. The gross receipts are to be distinguished from those of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants, warehouses, or offices. These latter gross receipts would be taxable.

*b.* The gross receipts from electricity used in the freezing of tangible personal property, ultimately to be sold at retail, to make the property marketable would be exempt from sales tax, *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission*, 81 N.W.2d 437 (Iowa 1957).

c. Electricity used merely in the refrigeration or the holding of tangible personal property for the purpose of preventing spoilage or to preserve the property in its present state would not be “used in processing” and, therefore, its gross receipts would be subject to tax, *Fischer Artificial Ice*, supra.

d. Prior to July 1, 1995, electricity or other fuel used by greenhouses and their related facilities for the purposes of growing plants is not under any circumstances fuel which is used in processing, and the gross receipts from its sales would be subject to tax. On and after July 1, 1995, electricity or other fuel used for heating or cooling of a building used in the commercial production of flowering, ornamental, or vegetable plants, is exempt from tax. See 701—subrule 18.57(2) for more information.

**17.3(2) Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services used in processing.** An expanded definition of “processing” is allowed to manufacturers of food products for human consumption using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services. The definition of processing applicable to persons who are not manufacturers of food products but who are using taxable services is found in subrule 17.3(1).

a. “Manufacturer” characterized. A manufacturer is a person or entity different from a merchant, dealer, or retailer. See *Commonwealth v. Thackara Mfg. Co.*, 27 A. 13 (Pa. 1893). In order for a business to be a manufacturer the principal business of that business must be manufacturing. See *Associated General Contractors v. State Tax Commission*, 123 N.W.2d 922 (Iowa 1963). Another distinction is that a merchant or retailer sells in order to earn a profit and a manufacturer sells to take profits already earned from prior activity. See *State v. Coastal Petrol Inc.*, 198 So. 610 (Ala. 1940). A person primarily engaged in selling tangible personal property in order to earn a profit and only incidentally engaged in creating products suitable for use from raw materials is not a manufacturer. A retail grocery store, incidentally and not primarily engaged in manufacturing activities such as meat cutting or production and packaging of baked goods, is not a “manufacturer of food products for human consumption” and not entitled to claim the special processing exemption allowed to those manufacturers. Retail food stores, restaurants, and other persons incidentally engaged in food manufacturing activities can, however, continue to claim on their incidental processing activities the processing exemption allowed to persons who are not manufacturers of food products for human consumption. See subrule 17.3(1).

b. For sales occurring on and after July 1, 1985, the following activities constitute processing when performed by a manufacturer to create food products for human consumption. Any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, or other taxable services primarily used in the performance of these activities is exempt from tax.

(1) Treatment of material that changes its form, context, or condition in order to produce a marketable food product for human consumption. “Special” treatment of the material to change its form, context, or condition is not necessary. Examples of “treatment” which would not be “special” are the following: washing, sorting and grading of fruits or vegetables; the washing, sorting, and grading of eggs; and the mixing or agitation of liquids. By way of contrast, sterilization would be “special treatment.”

(2) Maintenance of quality or integrity of the food product and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food in marketable condition. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in freezers, heaters, coolers, refrigerators, or evaporators used in cooling or heating which holds the food product at a temperature necessary to maintain quality or integrity or avoid spoilage of the food or to hold the food product in marketable condition is exempt from tax. It is not necessary that the taxable service be used to raise or lower the temperature of the food. Also, processing of food products for human consumption does not cease when the food product is in marketable form. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to maintain or to change a temperature necessary to keep the product marketable is exempt from tax.